

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LAWRENCE J. & ESTELLE MITTENTHAL,)
)
Petitioner,)
)
v.) Docket No. 998-12SL.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL

Petitioners in this case invoke our jurisdiction under section 6330(d)(1) to review respondent's determination to levy to collect petitioners' unpaid income taxes for the 2008 taxable year.¹ On December 18, 2012, respondent filed a Motion to Dismiss on Ground of Mootness. On January 7, 2013, petitioners filed a Response in Opposition to Motion to Dismiss on Ground of Mootness.

In support of his motion, respondent submitted account transcripts showing that there is no longer any amount due with respect to petitioners' 2008 taxable year. Subsequent to the filing of the petition, an overpayment from petitioners' 2009 taxable year was offset against petitioners' unpaid balance for 2008 and all of the remaining liability for that year was abated. As a result, respondent represents that he no longer needs or intends to levy to collect petitioners' income tax liability for 2008 and contends that this case must be dismissed as moot.

Petitioners object to respondent's motion, contending that a case or controversy remains because the additions to tax for late filing and payment that were the subject of the levy were wrongfully imposed. However, the Court's jurisdiction over the underlying tax liability for 2008, including additions to tax, arises only as a result of petitioners' challenge to respondent's determination to

¹All section references are to the Internal Revenue Code of 1986, as in effect for the year at issue.

proceed with the levy.² See sec. 6330(d)(1). Since respondent has eliminated the liability at issue by offset and abandoned the proposed levy, there is no longer a case or controversy over which the Court has jurisdiction. See Greene-Thapedi v. Commissioner, 126 T.C. 1, 7-8 (2006). We therefore conclude that respondent's Motion to Dismiss should be granted.

In consideration of the foregoing, it is

ORDERED that respondent's Motion to Dismiss on Grounds of Mootness, filed December 18, 2012, is granted and this case is dismissed as moot.

(Signed) Joseph H. Gale
Judge

ENTERED: **JAN 29 2013**

²Absent respondent's attempt to levy, petitioners could not have obtained prepayment judicial review of the liabilities they dispute, which consist of additions to tax for late filing and late payment under sec. 6651. See sec. 6665(b) (allowing summary assessment of additions to tax under sec. 6651 where the additions are not attributable to a deficiency in tax).